

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

ANNE WAITE,

Appellant,

v.

DEPARTMENT OF TRANSPORTATION,

Respondent.

) Case No. RED-03-0014

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held at the Office Of the Attorney General, 1116 West Riverside, Spokane, Washington, on October 16, 2003. BUSSE NUTLEY, Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Anne Waite was present and was represented by Bill Kalibak, Union Representative for International Federal of Professional and Technical Engineers. Patricia Thompson, Assistant Attorney General, represented Respondent Department of Transportation.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a six-month reduction in salary. Respondent alleges that Appellant neglected her duty, was insubordinate and willfully violated agency rules regarding leave use.

II. FINDINGS OF FACT

2.1 Appellant Anne Waite is a Transportation Technician 3 and permanent employee for Respondent Department of Transportation. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on March 25, 2003.

2.2 Appellant was familiar with the agency's policies and procedures regarding leave, which required scheduled leave to be submitted to the supervisor prior to the anticipated absence to allow sufficient time for consideration and approval. The policy further indicates that unforeseen absences, such as illness, injury, unexpected family care, etc., should be reported by telephone prior to the start of the employee's scheduled shift. Appellant also received guidance regarding her use of leave and had been instructed to obtain pre-approval for planned leave and to call work prior to her shift for any unplanned leave. Appellant understood the procedures for requesting annual leave ahead of time.

2.3 Appellant planned to vacation in Puerto Vallarta Mexico in November 2002. On November 4, 2002, she submitted a leave slip for annual leave during Thanksgiving week, November 25 through November 29. Gordon Hurt, Appellant's supervisor, was responsible for approving Appellant's vacation leave request. In the past, Appellant submitted leave slips when she had insufficient time accrued. Therefore, Mr. Hurt asked Appellant to verify she had time available to take off. Appellant confirmed she had enough time accrued to take three days of leave, not including the two paid holidays.

2.4 On November 6, 2003, Appellant emailed Mr. Hurt and asked if she could exchange her Friday flex day with one of her vacation days. Mr. Hurt granted Appellant's request, and she

1 worked on November 22, the Friday before she went on vacation. Appellant submitted her leave
2 slips, which were approved and signed by Mr. Hurt.

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4 2.5 Mr. Hurt expected Appellant to return on Monday, December 2, 2002. However, Appellant
5 did not report to work, and she failed to call and report her absence. Mr. Hurt checked the vacation
6 log, which did not list Appellant as absent that week. After making further inquiries, Mr. Hurt was
7 informed that Appellant's computer calendar showed Appellant was scheduled to be gone Monday,
8 December 2 through Wednesday, December 4, 2002.

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10 2.6 On Thursday, December 5, Appellant called in sick. Friday, December 6, was Appellant's
11 regularly scheduled flex day. On December 9, 2002, Appellant returned to work. Appellant
12 completed a leave slip for her absences on December 2, 3, and 4. Appellant requested to take sick
13 leave for a portion of her leave on the 4th, indicating that she had "jet lag" and caught a cold upon
14 returning from vacation.

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16 2.7 Appellant subsequently submitted a written response to explain her absences from work.
17 She indicated Mr. Hurt was aware of her return to work date. Her statement also explained she was
18 aware of her leave balances, and she "knew the flight was coming in at an ungodly hour on the
19 [December] 4th, so [she] planned to use both Sick and Annual leave for that day."

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21 2.8 In her testimony before us, Appellant admitted she was still on vacation and had not put in a
22 vacation request for December 2, 3 and 4 ahead of time. Appellant also testified she received pre-
23 approval from Mr. Hurt to take leave those days and approval to submit the leave slip after she
24 returned from vacation. Mr. Hurt testified, and he denied having any prior knowledge that
25 Appellant was extending her vacation time to include December 2, 3 and December 4. We do not
26 find Appellant's explanations believable. Under the circumstances, we find Mr. Hurt has no motive

1 to deny he was unaware of Appellant's plans to extend her leave into the month of December. On
2 the other hand, Appellant was aware she did not have sufficient annual leave to cover the entire
3 period of her vacation and has more motive to misrepresent the events.

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5 2.9 Ralph W. Robertson, Assistant Regional Administrator for Construction, was Appellant's
6 appointing authority when the discipline was imposed. On February 6, 2003, Appellant attended a
7 pre-disciplinary meeting where she was provided an opportunity to explain the circumstances of her
8 absences. Appellant claimed Mr. Hurt was aware that she was scheduled to be absent in early
9 December or that Mr. Hurt should have known because everyone else in the office knew of her
10 vacation plans. Appellant also claimed Mr. Hurt gave her permission to submit her leave slip for
11 the December absence after her she returned from vacation. Further, Appellant claimed she was
12 unaware until the Saturday before she left that she was not due to return from her trip until
13 December 3. Appellant acknowledged she knew she did not have enough leave accrued to cover
14 her entire absence. Appellant also indicated that because the flight would be arriving late and due to
15 jet lag, she believed taking sick leave for jet lag was an appropriate "precautionary" measure.

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17 2.10 After considering Appellant's response, Mr. Robertson concluded she failed to get
18 preauthorized vacation leave, failed to inform her supervisor she would be absent on December 2, 3
19 and 4, and failed to call in and report her use of sick leave on December 4. Mr. Robertson
20 concluded that Appellant was aware prior to her vacation that her annual leave balance would be
21 exhausted midway through her assigned shift on December 4 and he concluded that her use of sick
22 leave to augment her vacation leave was unacceptable. He also determined that Appellant's attempt
23 to use sick leave in order to recuperate from jet lag did not meet the requirements of "preventative
24 health care."

1 2.11 In determining the level of discipline, Mr. Robertson considered Appellant's length of
2 service with the department, her experience, her employment record, and her history of leave use.
3 Mr. Robertson also considered a letter of concern Appellant received in 1996 that addressed her
4 failure to report to work or call in advance to notify her supervisor of her absence from work.
5 Similar concerns were addressed with Appellant in 2001 and 2002. Mr. Robertson concluded
6 discipline was warranted, and he decided a six-month reduction in pay was appropriate under the
7 circumstances.

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9 2.12 By letter dated March 12, 2003, Mr. Robertson notified Appellant of her reduction in salary,
10 effective April 1, 2002 through September 30, 2002. Mr. Robertson reduced Appellant's pay from
11 Range 50, Step K, to Range 50, Step I, and charged Appellant with neglect of duty, insubordination
12 and willful violation of published employing agency or department of personnel rules or regulations
13 regarding her absences in December and her use of sick leave for jet lag on December 5.

14 15 **III. ARGUMENTS OF THE PARTIES**

16 3.1 Respondent argues Appellant clearly knew she did not have enough leave available to cover
17 her entire vacation and she deliberately failed to get authorization from her supervisor to be absent
18 in December. Respondent asserts Mr. Hurt was more credible when he testified that Appellant
19 failed to inform him she was extending her vacation and would not return to work until December.
20 Respondent further asserts that "jet lag" is an inappropriate use of sick leave. Respondent argues
21 Appellant neglected her duty to report to work and failed to obtain pre-approval for her absences in
22 December. Respondent asserts Appellant was insubordinate, because she disregarded prior
23 supervisory instructions that required her to give advance notice regarding leave usage. Respondent
24 also asserts Appellant willfully violated agency policy when she filled out a sick leave request for
25 "jet lag", which was not appropriate under the circumstances.

1 3.2 Appellant asserts her supervisor was aware she was returning in December, and he not only
2 approved her absence, but he also allowed her to submit her leave slip for that time period after she
3 returned from vacation. Appellant asserts her calendar reflected when she was scheduled to be on
4 vacation and, if her supervisor had reviewed it, he would have seen she was scheduled to be out
5 from November 25 through December 4. Appellant claims she talked openly about her vacation
6 with staff and it was common knowledge when she would be gone. Appellant argues her absence
7 had no major bearing on the workload, and she further claims her use of sick leave conformed with
8 the merit systems rules and the agency's sick leave policy.

10 IV. CONCLUSIONS OF LAW

11 4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

13 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
14 the charges upon which the action was initiated by proving by a preponderance of the credible
15 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
16 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
17 Corrections, PAB No. D82-084 (1983).

19 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
20 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
21 of Social & Health Services, PAB No. D86-119 (1987).

23 4.4 Respondent has met its burden of proving by a preponderance of the evidence that Appellant
24 failed to properly notify her supervisor, or anyone else in the supervisory chain, that she planned to
25 be on vacation on December 2, 3 and 4, 2002. Appellant also neglected her duty to obtain pre-
26 approval from a supervisor for her absences.

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2 4.5 Insubordination is the refusal to comply with a lawful order or directive given by a superior
3 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.
4 Dep't of Social & Health Services, PAB No. D94-025 (1995).

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6 4.6 Respondent has met its burden of proof that Appellant's behavior constituted
7 insubordination. Appellant's absences from work were unauthorized and she willfully disregarded
8 prior supervisory directives to provide advance notice of her absences.

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10 4.7 Willful violation of published employing agency or institution or Personnel Resources
11 Board rules or regulations is established by facts showing the existence and publication of the rules
12 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
13 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

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15 4.8 Respondent has met its burden of proving by a preponderance of the credible evidence that
16 Appellant willfully violated agency policy when she failed to submit her vacation leave request in
17 advance of her absence. Furthermore, Appellant's submittal of a timesheet for sick leave, because
18 she was suffering from jet lag, violated the intent of the merit system rules regarding legitimate uses
19 of sick leave.

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21 4.9 Under the facts and circumstances, the disciplinary sanction of a six-month reduction in
22 salary (Range 50, Step K to Range 50, Step I) is appropriate, and the appeal should be denied.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Anne Waite is denied.

DATED this _____ day of _____, 2004.

WASHINGTON STATE PERSONNEL APPEALS BOARD

Walter T. Hubbard, Chair

Gerald L. Morgen, Vice Chair